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Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term A.D. 1972

No. 72-447

CITY OF CHICAGO

Respondent

v.

JOHN A. HUTTER, et al.,
Petitioners

Appeal from the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

TO THE

SUPREME COURT OF ILLINOIS

John A. Hutter
Attorney for Petitioners
3526 N. Marshfield Avenue
Chicago, Illinois 60657
GR 7-2259

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OPINIONS IN COURTS BELOW

(a) There are no official or unofficial reports. The opinion of the court is appended to this petition.

JURISDICIONAL GROUNDS

(b) The jurisdiction of this court is invoked according to Section 28 paragraph 125(3) on the grounds that the decisions of the lower courts have denied the petitioners their rights under the Constitution of the United States, under Amendment 14 to due process.

(i) The final judgment of the Supreme Court of Illinois denying leave to appeal to that court was dated June 19, 1972.

(ii) Petitioners believe that the statutory provision Section 28, paragraph 1257(3) confer jurisdiction on this court to review the judgment by a writ of Certiorari.

QUESTIONS PRESENTED FOR REVIEW

(c) The questions presented for review are:
(1) Were the Constitutional rights of the petitioners violated when they were fined because they appealed the decision of a Circuit Court in Illinois?
(2) May the parties, under direction of the Circuit Court, after final judgment by that court and confirmed by the Appellate Court, modify that judgment to conform to a city ordinance whereas the confirmed judgment did not?
(3) When an approved bond has been filed and supersedeas is in effect pending appeal to the upper courts, may the Circuit Court ignore the supersedeas and assess an additional fine while the appeal is pending and the defendants were in complete compliance with the mandate of the Appellate Court as outlined in (2) before any modification?

CONSTITUTIONAL PROVISIONS INVOLVED

(d) (1) Amendment 14 of the United States Constitution pertaining to right of persons not to be deprived of their property or other rights without due process according to law.

(i) The final judgment of the Supreme Court of Illinois denying leave to appeal to that court was dated June 19, 1972;

(ii) Petitioners believe that the statutory provision Section 2B, paragraph (3)(1.1) confers jurisdiction on this court to review the judgment by a writ of Certiorari.

CONSTITUTIONAL PROVISIONS FOR REVIEW

(a) The amendments presented for review are:

(1) Were the Constitutional rights of the petitioners violated when they were tried because they appealed the decision of a Circuit Court in Illinois?

(2) May the parties, under direction of the Circuit Court, after final judgment by that court and confirmed by the Appellate Court, modify that judgment to conform to a city ordinance whereas the contested judgment did not?

(3) When an approved bond has been filed and accepted, is in effect pending appeal to the upper courts, may the Circuit Court ignore the appearance and assess an additional fine while the appeal is pending and the defendants were in complete compliance with the mandate of the Appellate Court as outlined in (a) 2 above?

CONSTITUTIONAL PROVISIONS INVOLVED

(a) (1) Amendment 14 of the United States Constitution pertaining to rights of persons not to be deprived of their property or other rights without due process according to law.

STATEMENT OF CASE

(e) This case concerns an alleged building Code violation of the City of Chicago.

The complaint of the City read, "Provide additional means of egress top floor all apartments"and quoted chapters 67-4; 78-15-1-4 (the petitioners have complied with this).

This allegation is in complete harmony with the ordinance.

The order of the Circuit Court of Cook County did not. It read, "It is therefore ordered, adjudged and decreed: 1. The defendants vacate any two apartments on the fourth floor."

Thus, this order deprived the petitioners of the use of their property contrary to law and without due process as required by Amendment 14 of the Constitution of the United States.

The petitioners have been protesting this, to no avail, for five years.

The petitioners appealed this order (110 Ill App 2d 321 at 326-327), which was confirmed (supersedeas bond had been filed).

Because the petitioners made this appeal (the Illinois Supreme Court and this Court refused to hear the case) Judge Louis A. Wexler, Citcuit Court Judge, fined the petitioners $500. on May 25, 1970; they posted a supersedeas bond on June 24, 1970 and made the appeal (55302 Appellate, 44974 Ill. S Ct.) which is now presented to this court in this petition for a writ of Certiorari (question No. 1 supra).

During this hearing the petitioners completed the additional exits demanded by the City in its complaint, supra, and by the City at this hearing under instructions of the Court. (The apartments were vacated at this time in compliance with mandate of Appellate Court.) The City in its Appellee's brief stated, "A court's order must be obeyed until such time as it is set aside by either the issuing or reviewing court. Paris v. Paris 35 Ill. 2d 305." Here the Circuit Court set aside its previous order, contrary to the City ordinance, by requiring the petitioners to provide the additional exits asked for in the complaint of the City and in compliance with the ordinance. (Question 2 supra.)

While this appeal was pending in the Appellate Court, and supersedeas was in effect, and two of the three apartments were vacated, the Circuit Court imposed an additional fine of $2,800. on petitioners, without notice, ex parte, because the Assistant Corporation counsel Tim O'Hara said the appeal (for which the petitioners had already been fined $500.) caused him $10,000. worth of annoyance. (Question 3 supra.)

The Supreme Court of Illinois denied a petition for leave to appeal and this is an appeal from that court.

ARGUMENT SUPPORTING ALLOWANCE OF WRIT

(f) The petitioners, over the past five years, have been subject to every type of harassment imaginable, because they had the audacity in their answer to the respondents complaint, to state that they were not in violation of any City Building Code ordinances.

On June 19, 1972 the Illinois Supreme Court denied a "Further motion to reconsider order denying petition for leave to appeal and other motions dated May 18, 1972." This motion sets forth in detail all of the arguments the petitioners could make to this Court. Instead of duplicating this material by putting the motion in the Appendix and restating its substance here, the petitioners are here presenting the complete motion to the Supreme Court of Illinois as part of their argument.

The complete motion reads as follows:

Now come the respondent defendants by John A. Hutter their attorney and ask the court to reconsider its denial of motion dated May 18, 1972.

Just what use is the Appellate procedure when the Upper Courts never provide answers to any questions raised by the Appellants?

For five years these appellants have raised pertinent, vital questions concerning actions in the Circuit Court in Case No. 67 CH 51317. Not a single question has ever been answered.

Current questions that remain unanswered are:

1. Were the Constitutional rights of the defendants Appellants violated when they were fined by the Circuit Court for appealing an Order of that court?

2. May the parties to an action, after final judgment, agree to a settlement among themselves to modify that judgment, with approval of Court, to conform to an ordinance whereas the judgment did not?

3. When an approved bond has been filed and supersedeas is in effect pending appeal to the Appellate Court, may the Circuit Court assess an additional fine even though the defendants have conformed to the original judgment indicated in No. 2 without any modification? This question was raised by an unanswered motion to the Appellate Court.

4. May the Circuit Court, while above supersedeas is in effect and no decision reached by this court, and with no service upon attorney of record of purported action, appoint a Receiver to petitioner's property when the only unresolved questions are those of Nos. 1, 2, and 3; there were no new circumstances (upon action the Appellate Court stayed its mandate pending appeal to this court).

Counsel Hutter believes that the only possible answers to above questions are No. 1, Yes. No. 2, Yes. No. 3, No. No. 4, No.

Both the Appellate and this court have the sworn duty to see that actions by a lower court conform to and are not repugnant to the provisions of the Illinois and Federal Constitutions; that justice is done; that procedural actions conform to the rules of this court; that Circuit judges are qualified and hold court in compliance with the highest ethical standards of the legal profession; that attorneys appearing before the court conform to those standards (not excluding either corporation counsel nor States attorney).

We tell our young people that they can resolve their problems by working within the system and not resorting to violence. Government must simply make

this possible before it is too late. How many persons do members of this court know who honestly believe most facets of government are doing this? The primary protest vote clearly illustrates the fact that many people believe that they stand little or no chance of being heard or receiving justice in their dealings with local or State government.

Does this court really believe that judges, in both the Circuit and Appellate courts, who were part of the local political machine and government before they became judges, are able to claim that they are neutral, unbiased, and not beholden to the powers that made their judgeship possible?

Can this court recall many alleged building violations that have been decided in favor of the harassed property owner?

In Moscow the subject knows what the score is. He is well aware of the fact that if he protests anything he is told to do, he will quickly find himself in one of the least desirable sections of Siberia.

A resident of Chicago on the other hand may have the cruel delusion that the Constitution and our system of justice will protect him from the tyranny of government.

Mike Royko, Pulitzer prize winning journalist, provides many examples of the brutal manner in which Chicago treats its property owners who are not on the inside and have the necessary clout. Consider the following typical article; also an excerpt from his best seller, "The Boss."

Chicago Daily News 6-4-72

Mike Royko

Afraid to die, afraid to live

Anybody with eyes can see that the best building on the block belongs to Sophia Flig.

She and her husband, John, have that Old Country obsession about keeping their property up. Despite bad health, Mrs. Flig, 58, still scrubs the hallway and sweeps her sidewalk.

Everything she and John have is contained in the building, a five-flat with a grocery on the first floor, at 2038 W. Coulter, on the Southwest Side.

Even the city's building inspectors used to agree that it was a good building.

They thought so all the years the Fligs gave them small bribes every time they came around.

But the inspectors don't care for the building any more. Mrs. Flig says they changed their minds when she stopped handing out bribes.

Now, the Fligs find themselves bouncing in and out of Housing Court, and three of the flats are almost always vacant.

"LONG TIME AGO," says Mrs. Flig, in a broad Polish accent, "lawyer tell us, as long as you are here, give the inspector $25 or $50 every year. Everything will be OK.

"We do that, and everything is OK. This building was my pride and joy, to have something my own. I never depend on nobody. I struggle all my life, so we have this building. We raise our children here, run our store.

"But then my husband get sick, and I get sick, and we have medical bills. And my daughter — the last one — get married, and the wedding costs money.

"So we can't afford to give any more to the inspectors. For three, four years it's been very bad.

"The inspectors always coming, bothering the tenants, going from room to room. I don't even know what they are looking for.

"Before, they would tell us about little violations. I give them some money, we fix up violations, and everything would be fine. We'd have the flats rented out.

"Now I can't keep tenants. The inspectors bother them, scare them and they move out.

"No more rents coming in, but the tax bill comes in. No more rents, but I pay higher taxes. Maybe that's why I had heart attack."

Because Mrs. Flig lives in the 25th Ward, which is run by Ald. Vito Marzullo, who has vast clout in City Hall, it was suggested to her that she see him about getting some of the pressure eased.

But she says that probably wouldn't help. The Fligs made the mistake some years ago of giving in to ethnic pride and putting a picture of Republican Ben Adamowski in their store window, when he ran for mayor. That night their windows were caved in.

THEY ONCE ASKED a precinct captain to help them fight a $230 personal property tax bill (in addition to their real estate tax) because they didn't think the contents of their tiny store were that valuable.

"He told me he'd give me a break. He said I should write a $61 check to the county treasurer, and give him $116 cash for his fee. I don't do that."

Now, Mrs. Flig and her husband are stuck.

The neighborhood is slowly decaying, although their building is still well maintained. Their grocery business is almost dead: people seldom shop in neighborhood food stores anymore. They have little income, beyond Flig's Social Security check, and they can't afford to maintain their building and pay the higher taxes. But if they sell it, they will get little because of the city's demands for costly improvements.

"Always I did the best I can," she says, a little, gray-haired lady with a bad ticker.

"I don't bother nobody, but still I can't live like a human being.

"When I lay down to sleep, I'm afraid to die because nobody will be here to take care of my husband. And I'm afraid to live on account of all my trouble.

"This is impossible, impossible, impossible."

About the only consolation one can offer Mrs. Flig is that she is fortunate to live in the one big American city that really works.

THE LATEST RAP against the Flig building is that the third-floor flat doesn't have two exits. It has that in common with many buildings its age, since the laws were changed long after the buildings were constructed.

The city has told the Fligs that they have to put in a second exit. Since this would involve the construction of two flights of outside stairs, the Fligs say they would rather let the flat remain vacant. But the city says if they do that, they have to remove a sink from the third floor, as assurance that they won't rent it out.

From Royko "The Boss

During the day he worked in City Hall. After work, he went to DePaul University's School of Law, four nights a week, 6 P.M. to 8 P.M. The rest of his time was taken up with ward politics and the Hamburg Club athletics. He managed the club's softball team.

As hard as a party member may try, and as bright and presentable as he may be, he probably won't make it if he isn't from a strong ward with an influential ward boss. A loyal, hard-working City Hall lawyer can become a judge, if his ward brings in the vote and his sponsor pushes him, while in another ward, where the Republicans dominate and the ward boss just hangs on, the City Hall lawyer can only dream of his black robe.

Judge Wexler, Daley's night school classmate, lived with this problem. Wexler had worked feverishly as the city's chief prosecutor of slum cases, dragging landlords into court, reaping publicity for the mayor's administration, while deftly avoiding the toes of slum landlords who had political connections. For years he trotted into Daley's office with his news clippings. But when slate-making time came around, other people got to be judges.

"My ward committeeman was so weak, he couldn't do anything. I used to ask him for a letter to the Central Committee sponsoring me for a judgeship. You have to have a sponsoring letter. And he'd say: 'A letter for you? I want to be a judge myself, and I'm not getting anywhere.' I would have never made it if it hadn't been for Daley and knowing him from night school. He did it for me personally."

Wexler was fortunate. For the others with ambitions, it is either a strong committeeman and advancement, or an obscure job with nothing to put in the scrap book.

uter went to the same school at
e same time with Wexler, Daley and Bayl
d was a member of the faculty at
e same time Judge John Gutknecht
as

Daley.

One of Daley's fellow students was Louis Wexler, a Russian-born immigrant, who got off the boat and zipped through elementary and high school in four years.

"Daley was a nice fellow, very quiet, a hard worker, and always neatly dressed. He never missed a class and always got there on time. But there was nothing about him that would make him stand out, as far as becoming something special in life. Even then, he misused the language so that you noticed it. He had trouble expressing himself and his grammar wasn't good." But thirty years later, Daley's grammar was good enough to say "yes" when Wexler appealed to their old night school ties, and Wexler

Just how could a judge like Louis Wexler be considered objective, unbiased, unbeholden, and bent upon seeing that justice is done? (He refused change of venue several times.)

The Appellate Court stated in its Opinion and Judgment, "We are confronted with a plethora of briefs, original, supplemental and additional, not to mention motions, and counter-motions of all kinds and descriptions, filed by the defendant in his own behalf. This mass of paper work is primarily a reargument of the issues formerly decided by this court, (NOTE: the corporation counsel requested by motion that the previous file be brought into evidence, which was allowed), combined with presentation of a multitude of extraneous and immaterial arguments. It is virtually sufficient to elevate this case to the status of the Jandyce case of literary fame.

Perhaps this court will agree after reviewing this brief. The fact is that counsel is determined that all facets of this case are reduced to black and white for future reference.

The Appellate court further stated, "It is axiomatic that the previous order of the Circuit Court for mandatory injunction, affirmed by this Court, settled and decided with finality all issues between these parties with reference to the propriety of the mandatory injunction. The former judgment of the Circuit Court, affirmed by this court, is conclusive not only to all questions actually decided but as to all questions which might have been litigated and determined therein."

Thus the Appellate Court merely confirmed what counsel told Judge Wexler in

open court on May 25, 1972: "that all facets of this case were res judicata."

On page 1 of Appellate Court's decision, it quoted part of the previous order of the court (110 Ill. App 2d 321 at 326-27).

"The public benefit resulting from the enforcement of the ordinance in the instant case clearly outweighs any detriment or loss of income suffered by the defendants." How absurd! There is no such ordinance!!

Here the Appellate court approved of the determination of the corporation counsel and the City to deprive the Appellants of the use of their property contrary to any ordinance and contrary to any due process requirement of Amendment 14 of the U. S. Constitution.

The complaint of the City reads: "Provide additional means of egress for the the following location. Provide additional means of egress top floor all apts." and quoted 67-4; 78-15-1-4. (The Appellants have complied with this.)

This demand of course bears no relationship to the order which the corporation counsel drew up and got Judge Kvistad to sign, which read: "It is therefore ordered, adjudged and decreed:

1. The Defendants vacate any two apartments on the fourth floor."

Hutter asked nine courts including this court to give a reason why these apartments did not comply as is, with Chapter 67-4(e) of the Chicago Building Code. None did and none could for they were in full compliance with the ordinance. Here was another basic question which the Upper Courts refused to answer. Could

this ever be called proper Appellate Court behavior and justice?

When Hutter learned no court would protect his Constitutional rights to due process, he immediately took steps to comply with the order.

In spite of the written pleas to the court not to be vindictive and not to permit the corporation counsel O'Hara to be vindictive because Hutter had exercised his statutory and Constitutional right to appeal, Judge Wexler immediately fined Hutter $500. for having appealed.

In the transcript May 25, 1970, Hutter asked Judge Wexler in court, "Did you enter the fine simply because we appealed to the Supreme Court to protect our Constitutional rights? Is that the reason, your honor?" The Court: "No, the court was very considerate in reducing the fine in half as to what the City called for."

In the June 15, 1970 transcript the court said, "You were fined for carrying a case on our books for three years."

On the transcript dated June 16, 1970 the court told Hutter he was fined $500. "because the case is growing whiskers." He further told Hutter, "If defendant appealed and if the Appellate court did not give defendant relief on fine he would fine the defendant $5,000. more." Hutter: "This isn't due process under the 14th Amendment."

While Hutter was vacating the apartments in compliance with mandate, assistant corporation Dickman, in transcript dated June 16, 1970, said, "Mr. Hutter, are you going to provide adequate means of egress for the fourth floor?"

The transcripts are clear (Abstract of Records) that Hutter saw Judge Wexler in his chambers, where the understanding was that the fine would be waived or reduced and of course Hutter would have the use of his apartments if he provided additional outside exits. Hutter provided plans, engaged a licensed architect, showed the plans to Lt. Roloff, the complaining witness for the City, who approved them. Mr. Kekarek, the head of the Permit Dept. of the City also approved the plans. The outside exit stairways were constructed, and approved by Judge Horan and was inspected by City Building Inspectors. Photographs were introduced into evidence before Judge Horan and are part of the record before the Appellate Court in Case No. 55302, which is here under consideration. (Transcript August 21, 1970.)

Does this court find any possible reason why Hutter should not have the use of these apartments? Here the parties, with the approval of the court, modified the mandate to conform with the City ordinances Chapter 67 and 78 whereas the order in the mandate did not.

In the transcript dated August 26, 1970, Judge Wexler told Hutter, "I have nothing before me. If you have any problem go to the Appellate Court - or some other place!!"

Counsel Hutter has never appeared in his court since.

The actions of Judge Wexler are highly unpredictable.

When word came that the U. S. Supreme Court had denied Certiorari and while the matter was also in the U. S. District Court

before Judge Will, and counsel Hutter was in California taking depositions in a matter before Judge Hoffman, Marian Coy, his daughter, who has no interest in the property, appeared in court for him.

Judge Wexler yelled at her and said she had better bring in a financial statement showing income and expenses of property or he would hold her in contempt. Lt. Roloff led her away in tears.

Assistant Corporation Counsel Timothy O'Hara and Judge Wexler have always ignored the fact that the case was on appeal and supersedeas was in effect and Hutter was told to go elsewhere.

Periodically, O'Hara, ignoring the appeal, would file a pleading in Judge Wexler's court.

Hutter is 73, his very sick wife whom he must constantly look after is 77. The building is their homestead and their sole means of livelihood is Social Security plus meager income from the building; he fears it would cost her life if Judge Wexler would send him to jail.

Judge Wexler always sets hearings concerning Hutter on Friday afternoons at 2:30 when he would have him alone without witnesses.

Usually Judge Wexler would call over the bailiff who would place one hand on his gun and the other on counsel Hutter's shoulder.

This took place at the first court session before Judge Wexler May 25, 1970. (Hutter in his opposition to motion asked Judge Wexler not to be vindictive and not

to leave O'Hara be vindictive because he had appealed the case.)

Hutter pointed out that this matter was pending before Judge Will in the U. S. District Court and asked the court to hold the matter in abeyance until Judge Will made his ruling in a few days.

Judge Wexler: "I'll fine him $500. and costs.
Hutter: "We're going to appeal that order, your honor."
Court: "Take him into custody, Mr. Bailiff."
Hutter: "Can I place a bond?"
Court: "Yes, $5,000. bond."
Transcript June 15, 1970.

Judge Wexler, "The fine has to be paid; if not, the bailiff will take you into custody. Be prepared tomorrow and bring your toothbrush or $500. If you don't pay this fine tomorrow, the Court is going to incarcerate you."

Transcript June 23, 1970.

Mr. Hutter: "Can I ask your Honor - suppose we do appeal, is there any reason why we cannot comply?"

Judge Wexler: "Take him into custody."

Of course, the court approved all the transcripts.

No matter what papers Hutter filed, Judge Wexler ignored them and refused to permit an argument.

Regardless of what point counsel Hutter would try to make, the answer was the same - "Take him into custody."

Would the members of this court look forward to appearing before a court like this?

Hutter appealed and a $1,000. bond was approved and filed to insure supersedeas.

In the transcript dated June 16, 1970, Judge Wexler told Hutter, "If you appeal and if the Appellate Court did not give you relief on the fine, I will fine you $5,000. more."

Hutter filed his brief in the Appellate Court and there asked Assistant corporation counsel Goldman who handles appeals if some settlement could be made to save the corporation counsel the bother of filing their brief. He said the fine might be remitted and that Hutter would have to see Assistant Corporation Counsel O'Hara. Hutter did; O'Hara was furious and insulting. He said the previous appeal caused him $10,000. worth of annoyance and that he was going to fine him $2,800. more. He talked like if he had Judge Wexler in his hip pocket.

A short time later he had the Chicago Police state a Fred Hampton, gestapo-type raid on Hutter's building at 1:30 a.m. They banged on the doors of the building, forced their way through rear apartments to the roof where they shouted, banged on Hutter's patio glass door and flashed lights in the windows while a squadrol waited on the street to take Hutter to jail.

There had been two recent burglaries into Hutter's apartment from the roof. The police accomplished nothing to find the intruders or recover family heirlooms.

Mrs. Hutter blacked out and nearly died. Hutter took her to her brother's farm at Oconto, Wisconsin, where he nursed

her for six months. During all this time two of the three apartments on the top floor were vacant according to the mandate before the additional exits were provided.

O'Hara told Hutter the supersedeas would not bother him so he instructed Judge Wexler to fine Hutter $2,800. more. Judge Wexler apparently did not want to wait with his threat to fine Hutter $5,000. more.

Hutter learned about the fine by accident when a close friend, attorney Sam Miller looked at the file and told him about it.

Hutter filed a motion for the Appellate court to set this aside. At the Oral Argument the court called assistant corporation counsel's attention to it and we both assumed that the court would rule on this additional fine.

The court reduced the $500. fine to $100. Did this mean it took the additional $2,800. into consideration and that the total fines Hutter was to pay was $100.?

In so doing the Appellate court, ignored the fact that Hutter provided additional exits as requested by the City and approved by the court (the City quoted Paris v. Paris 35 Ill 2d 305 providing for this in its brief) and stated, "In our opinion, defendant is engaging in futile litigation to his own detriment. It is essential that he comply with the mandatory injunction. No alternative exists." Is the court saying that even though Hutter provided the additional exits the City demanded and the Circuit Court approved as being in compliance with the City ordinance Chapter 78 of the Building Code,

he would forever be denied the right to use his property without due process?

Was the court warning of O'Hara-Wexler shenanigans to come?

The court continued on page 3 of Opinion, "We feel that defendant should be given a final opportunity to comply with the law and make peace with the proper authorities. With the hope of facilitating this most desirable result, we will exercise our power to reduce the amount of the fine imposed for contempt. What contempt? The apartments were vacated according to mandate. Even after the new outside stairway exit was completed, two apartments remained vacant pending the decision of the Appellate court. The contempt Hutter was guilty of was believing that every person has the right to exercise his Constitutional and statutory right to appeal.

A petition for rehearing was denied. Upon motion, the court stayed its mandate pending appeal to this court, and supersedeas remained in effect.

Because the Appellate court did not answer the questions about the additional fine of $2,800. and the providing of additional exits Hutter filed a new appeal No. 57165 specifically requesting a ruling on these two questions. The court refused and dismissed the action.

O'Hara never ceased in his determination to ruin Hutter one way or another.

One day while Hutter's daughter, Marian Coy, was at work as Case Worker for the County Public Aid, on North Lincoln Avenue, police officers served her with a summons to appear in court on the usual Friday afternoon when no one else was in court.

Marian, who has no interest in the building and who does not live in Hutter's building, called O'Hara to ask what the summons was all about. He shouted at her over the phone that if she was not in court on time he would have her in the House of Correction within two hours. Hutter was out of town at the time.

One night later, close to April 11, 1972, while Marian was at home entertaining friends, two men banged on her door and said they were taking over her father's building and demanded a list of his tenants - or else. Her work interviewing some 50 people a day who are applying for Public Aid, her problem of raising children at the same time, had put her on the edge of a nervous breakdown. Sometime later when Hutter was out of town the police again served her at 11:30 a.m. at the office to be in court in the loop 2½ hours later.

When this Case 67 CH 51317 some five years ago was heard for the first time before Judge Frank Machala, it was firmly established that Marian Coy had no interest in this property which is owned in joint tenancy by John and Clara Hutter. This harassment has greatly disturbed her. In Hutter's absence her worried calls to Sam Miller an old attorney friend, are evidence of this. She has had to take an indefinite leave of absence from her job and has gone in seclusion, no one knows where.

It has never been established that there is a receiver; perhaps it is a hoax, for example: Hutter the only attorney of record was never served with any motion or action that a receiver was contemplated; he was never served with any copy of a court order appointing a receiver, nor was anyone else; when he went to the Clerk's

office to check the file, it was missing, the Clerk said there was no indication where the file was. This is an absurd situation. It is evidence that O'Hara believes that he and the City of Chicago are so important that he can act like a tyrannical dictator and ignore the Illinois Supreme Court rules of practice.

Counsel Hutter has the highest respect for the law and its procedure.

When his daughter Marian told him what happened, Hutter wrote Mr. Zeller, telling him that if indeed it was a fact that a Receiver was appointed it would have been illegal for on the purported date of the order, March 23, 1972, supersedeas was in effect, the case was before the Illinois Supreme Court and no decision had been reached. He was told any notice to his tenants would cause irreparable injury to his reputation and business and warned him to hold off until he checked the facts or he would be liable for damage. He disregarded the letter and immediately threatened the tenants and later his attorney ignored the suggestion that he check all the cases and files Hutter told him about, and sent the following letter to all the tenants.

(Letter not pertinent here)

Hutter of course, would have been justified in continuing the operation of his building including the collecting of rent as heretofore for he was in no way legally informed of any purported receivership. Instead, he wrote the tenants telling them to hold up the payments of any rents due after April 1, 1972 until the matter could be clarified.

Over two months have gone around, bills are long overdue, for it is impossible to operate without revenue; scared tenants have moved out; it is impossible to rent units and this court has seen fit to deny the enforcement of the supersedeas hat was in effect on March 23, 1972 and should have continued to be in effect pending a decision by the court and an appeal to the U. S. Supreme Court. What reason could this court have had for denying simple justice? What justification did this court have for refusing an answer to the points and questions raised by the petitioners? Did four justices out of seven really vote to deny Hutter justice? How can this court decide a case without the record which the Appellate court will not forward to this Trial Court? Trials conducted in the fashion of Judge Wexler have no more meaning than a show trial in the Soviet Union. It would make much more sense to merge the corporation counsel and Judge Wexler's court into one for his trials appear to be a puppet show for O'Hara, who sees fit to state ahead of time what results will be.

O'Hara was and is so frustrated that anyone should have the audacity of answering one of his complaints not guilty of any violations. Perhaps Hutter was the only one. Short of calling out the militia to destroy Hutter, consider the latest O'Hara tactic. He has maliciously taken Case No. 67 CH 51317 which was tried over

five years ago on its merits by Judges Machala and Kvistad (nothing open except items in 44974) and revived it, and summoned all of the tenants and anyone else that he could find in Hutter's building.

What better way could he find to drive all of the tenants out of the building?

(Letter not pertinent here)

Agents of Zeller, the purported Receiver, served the summons.

In his testimony before Judge Frank H. Machala on February 27, 1968, the Fire Department's Lt. Roloff, complaining witness, stated: "All I can determine is this is a conversion where you have a means of egress problem. The major complaint is the egress problem on the top floor. Other items have been complied with. There are three apartments on the top floor. Each apartment has a means of egress to the third floor."

On May 27, 1968, Lt. Roloff testified before Judge Alvin J. Kvistad.

When asked by assistant corporation counsel Sidney Gordon what conditions the walls were on the top floor, after examining them, said, "It is a very, very well constructed building. It is very heavy."

Q. Would you say that it has adequate fire protection?

A. Well, the front would and the rear apartment, perhaps most of it would be alright."

The Appellate Court's decision in No. 53386 (110 Ill App. 2d 321) found "The building in question is located at 3526-28 No. Marshfield Avenue in Chicago. Originally, there were two story buildings on the site, one of which was of stone construction. A permit was issued in 1936 by the Building Apartment of the City allowing the defendants to construct and remodel the premises. Presently, a four story multiple dwelling brick building with a basement occupies the site."

"The transcript of the trials state that each of the apartments on the first, second and third floors has an entrance on a common or public corridor and that the corridor has a stairway at each end descending to the ground floor. Thus, as admitted by the City, the occupants of the apartments on the first three floors have two effective and acceptable means of egress."

Lt. Roloff testified supra that the two level apartments, third and top floor, also had ingress and egress to and from this legal corridor on the third floor, hence also met the requirements of Chapter 67-4(e) like any other apartments in the building (as stated supra. Nine courts including this one, refused to do their duty and state why these apartments were not in compliance with the City Building Code.)

Would it not be a great step forward in the search for justice, for this court, like the Supreme Court of Wisconsin to be required to hear every case and not close the door in the face of Appellants seeking justice and tell them to go away and don't bother us?

If this were done the Appellate Court judges would be more careful of what they do and they would no longer feel that they were the court of last resort.

These petitioners plead with this court not to close the door but hear this case to the end that fair play and justice prevail.

Respectfully submitted,

The Federal Constitutional question was raised at the outset. How misleading can a court decision be? On page 1 of Appellate Court order (Appendix) the court states: "The order required that any two apartments be vacated." "In effect this would convert the floor into a single apartment." Just what in the order would read this into it??

And on page 2, "On October 9, 1970, the Circuit Court entered an order finding the defendant in contempt of court for wilful disobedience of and failure to comply with the mandatory injunction and assessed the $500. fine against him." Absolutely not true. The fine was imposed on May 25, 1970 in the first hearing after this court refused Certiorari and while the matter was pending before Judge Hubert Will in the District Court. The apartments in question were vacated. The appeal bond of $1,000. was filed with the notice of Appeal on June 24, 1970. Note discussions in transcripts supra (pages.....) The Appellate court granted three 30 day extensions in which to file the complete record because Judge Wexler refused to sign an order until October 9, 1970, some five months after he fined the petitioners.

Between May 25, 1970 and October 9, 1970, according to transcripts, supra (.....) the petitioners provided the additional exits demanded by City and Court supra (.....) and the petitioners filed an additional notice of appeal so all of these matters were before the Appellate Court, and discussed in oral argument as was the additional fine of $2,800. The Appellate Court simply ignored this fact in its decision.

The court will note that mention is made supra to a Receiver and other acts of the City in its determined effort to destroy the petitioners. However, that is not part of this appeal; it is likely that it will be along later for that question is before the Appellate Court in petitioner's fourth Appeal No. 57367. Supersedeas has been established in that appeal as in this appeal. That doesn't bother the City, it just ignores that fact.

So here you have a situation identical with the current appeal before this court - Case No. 71-1419 and Hutter v. Tanck, et al., Circuit Court of Appeals, Seventh Circuit No. 71-1178, which is just being filed in this court.

They all have in common the disturbing fact that these governmental units laugh at and could not care less about the Constitutional rights of the persons within their jurisdiction.

In other places we have compared the plight of persons in this country with those in the Soviet Union. The distressing thing about persons in this country is that they take pride in our Constitution, and believe it will protect them. In most cases it appears to be only a cruel hoax.

An article in the Chicago Tribune dated August 4, 1972, points out the fact that in 1966 the Building Court, which is Chancery Court, disposed of 7,717 cases and in 1971 the number had increased to 13,406 and 1,383 buildings were demolished. Most of them were only 30-40 years old.

The Assessor gives a 90% allowance to the wealthy owner of a new highrise because of an "economic factor;" the vast middle

class apartment house owners that spent a lifetime accumulating them get no such allowance; instead, he gets a tax increase that approaches the gross income of his building as in the case of this petitioner; his tenants are encouraged to withhold rent; the building owner who does not have adequate clout, gets cited into court for alleged phony building violations; he then loses his lifetime savings. There is no hope for him; the courts will not protect his Constitutional rights. He is a slave to the political establishment.

The Appellate court knew whereof it spoke when on page 3 of its Opinion it stated, "In our opinion defendant is engaging in futile litigation to his own detriment. It is essential that he comply with the mandatory injunction. No alternative exists." No answer to questions raised; just do what you are told to do by the City; ignore your Constitutional rights; ignore the City Ordinances; ignore the statement of the court that if additional exits are provided you can rent the apartments; ignore a fine imposed for exercising right to appeal; ignore additional fine when case on appeal and supersedeas in effect. Yes, indeed, harassment will stop if you forget your rights as a free American citizen, do as you are told and act like a Soviet slave. Does this court agree with this formula?

Here again is a class action which affects property owners all over the nation not just in Chicago. Will this court protect their Constitutional rights?

The Court is asked to grant the petitioners request for a writ of Certiorari to the Supreme Court of Illinois and hear this case.

Respectfully submitted,
John A. Hutter,
Attorney for Petitioners

APPENDIX

55302

CITY OF CHICAGO, Plaintiff-Appellee vs. JOHN A. HUTTER, JR., et al., Defendants-Appellants	Appeal from the Circuit Court of Cook County Hon. Louis A. Wexler Presiding

MR. JUSTICE GOLDBERG delivered the opinion of the court:

John A. Hutter, Jr. (defendant) appeals from an order entered by the Circuit Court of Cook County assessing a fine of $500. against him for contempt of court for failure to comply with a mandatory injunction entered May 29, 1968.

This injunctional order found that defendant, his wife and another person owned real estate at 3526 North Marshfield Avenue, in Chicago, and were in violation of portions of the Building Code of the City as three apartments were being maintained on the fourth floor of the structure without sufficient provision for ingress and egress. The order required that any two apartments on the fourth floor be vacated. In effect, this would convert the floor into one single apartment, which would comply with the Code. Defendants appealed to this court and our opinion was filed May 19, 1969. The order for mandatory injunction was affirmed by this court. See City of Chicago v. Hutter, 110 Ill. App. 2d 321. The opinion of this court used the following language (110 Ill.App. 2d 321 at 326-27):

"The public benefit resulting from the enforcement of the ordinance in the instant case clearly outweighs any detriment or loss of income suffered by the defendants. Protection from fires and the resulting casualties is the primary duty of the city."

Thereafter defendants attempted to obtain reversal of this result in the Supreme Court of Illinois, the United States Supreme Court and the United States District Court. All of these attempts were unsuccessful.

In due course, the Circuit Court entered a rule on defendant to show cause why he should not be punished for contempt of court. On October 9, 1970, the Circuit Court entered an order finding defendant in contempt of court for willful disobedience of, and failure to comply with, the mandatory injunction and assessed the $500. fine against him.

We are confronted here with a plethora of briefs, original, supplemental and additional, not to mention motions, and countermotions of all kinds and descriptions, filed by defendant in his own behalf. This mass of paper work is primarily a reargument of the issues formerly decided by this court, combined with presentation of a multitude of extraneous and immaterial arguments. It is virtually sufficient to elevate this case to the status of the Jarndyce case of literary fame.

It is axiomatic that the previous order

of the Circuit Court for mandatory injunction, affirmed by this court, settled and decided with finality all issues between these parties with reference to the propriety of the mandatory injunction. The former judgment of the Circuit Court, affirmed by this court, is conclusive not only as to all questions actually decided but as to all questions which might have been litigated and determined therein. Gregory v. County of La Salle, 40 Ill.2d 417, 422; City of Peoria v. Peoria City Lines, Inc. 24 Ill.2d 457, 461; Sobina v. Busby, 62 Ill. App.2d 1, 17. The only matter open for our consideration is the proceedings which found defendant in contempt and resulted in the fine. No questions are raised by defendant in this regard nor are any pertinent authorities cited. It follows that the finding of contempt against defendant is necessarily affirmed.

In our opinion, defendant is engaging in futile litigation to his own detriment. It is essential that he comply with the mandatory injunction. No alternative exists. Yet, under all of the circumstances shown in this record and revealed to us in extensive oral arguments, we feel that defendant should be given a final opportunity to comply with the law and make his peace with the proper authorities. With the hope of facilitating this most desirable result, we will exercise our power to reduce the amount of the fine imposed for this contempt. 43 Ill.2d Rule 366(a)(5). Accordingly, the judgment for contempt against defendant John A. Hutter, Jr., is affirmed but is modified by reduction of the fine imposed to the amount of $100.

Judgment of contempt against defendant affirmed, fine reduced.

BURKE, P. J. and LYONS, J. concur.

State of Illinois
Office of
CLERK OF THE SUPREME COURT
Springfield
62706

Justin Taft
Clerk

217/525-2035

June 20, 1972

Mr. John A. Hutter
Attorney at Law
3526 N. Marshfield Avenue
Chicago, Illinois 60657

In re: City of Chicago,
a municipal corp.,
Respondent
vs. John A. Hutter, Jr.,
et al., Petitioners
No. 44974

Dear Mr. Hutter:

This office has received and filed as of June 19, 1972, your further motion to reconsider order denying petition for leave to appeal and other motions dated May 18, 1972, together with an order entered by the Supreme Court denying said motion concerning the above entitled cause.

Very truly yours,
(signed) Justin Taft
Clerk of the Supreme Court

JT:gn
cc--Hon. Richard L. Curry
Corporation Counsel
City of Chicago